

another. Government have recently received applications from various persons for permission to establish steam-boat service and to introduce motor-cars. The pioneers of these undertakings who have to incur at the outset some considerable expense and even risk naturally ask for the grant of exclusive privilege for a more or less limited period. We cannot expect capitalists to be so public spirited or philanthropic as to invest their money in an undertaking because the undertaking will prove beneficial to the public, without an assurance that when the undertaking has been shown to be a remunerative one, they will not be supplanted by rivals who did not share in the initial expense and risk. Some kind of limited monopoly is, therefore, necessary. But a monopoly however limited or partial is not an unmixed good, and it is therefore necessary that it should be hedged round by stringent and suitable restrictions. On the one hand, the grantee of the privilege should be protected not only from competing public carriers, but also from the wrongful acts of the public. On the other hand, the public should be equally protected from the wrongful acts of the public carrier. The Bill seeks to secure these objects. It is a short measure and contains only a few enacting provisions. All the details are left to be settled by rules to be framed from time to time. Considering that Public Conveyances by steam, electricity and similar motive power are a novelty in Travancore, and considering also the rapid changes and developments which have been made or are likely to be made in the methods of and demands for locomotion, it appears to be undesirable to embody in the Bill details which will have to be modified according to varying conditions.

I need only add one word with regard to the last section which gives power to Government to apply the provisions of the proposed measure to any regular transit service. The necessity for this provision will, I am sure, come home to all who have had experience of the present transit service in Travancore. I may add that the Bill does not affect any private conveyance worked by mechanical power or otherwise, even though such conveyance carries passengers or goods gratuitously or *pro hac vice*. I do not think I need trouble you with any further remarks at this stage and would, therefore, ask the permission of the Council to introduce the Bill.

Permission was accordingly granted.

TOBACCO REGULATION AMENDMENT BILL.

Mr. Thanu Pillai:—I beg to introduce a Bill to amend the Tobacco Regulation. The Bill has been already published in the Gazette under Rule 32. There are only two important provisions in the Bill. The one is section 1, which enables Government to declare that in any specified area the sale of tobacco shall be carried on only under a license; and the other is section 3, which empowers certain officers to search houses and other buildings &c. suspected to contain contraband tobacco and to arrest any person in such buildings &c., who is reasonably believed to have committed an offence under the Tobacco Regulation.

In regard to the first provision, namely, the introduction of the license system, it will be observed that it is intended only for particular localities, which will practically be the frontier tracts. It is there that smuggling prevails to a large extent and has to be checked by stringent measures. The Council is doubtless aware that in British India and Native Cochin, tobacco is practically free and pays very little revenue to the State, whereas in this country nearly one-ninth of the public revenue is derived from this source. In British India and Cochin, tobacco, not being an article of Government monopoly, sells much cheaper than here. There is thus great incentive for smuggling. I understand that the lay of some of the tracts about the frontier also affords facility for smuggling. It is understood that smugglers are hand and glove with the sellers, and with the aid of the latter, drive a fat trade in some of the frontier tracts. The introduction of the license system though it might lead to some little inconvenience will assist greatly in detecting smuggling and in preventing it. After all, the inconvenience will not be much, for even now the import, transport and sale of tobacco are subjected to a number of restrictions. For instance, a retail dealer who purchases tobacco from a wholesale dealer has to take out a pass for it. Until recently, only particular kinds

of tobacco could be sold in particular tracts. With the passing of the Tobacco Regulation, some of the restrictions have been done away with, but some restrictions still remain, and the people have been used to them. As the proposed licenses are to be free, there cannot be much practical hardship.

The second provision empowers certain officers to search houses and arrest suspected persons. This, perhaps, is not altogether noncontentious, nor so innocuous. It is just possible that the power may be abused in some cases. Every innocent weapon may be turned into a weapon of offence and every power given to the executive may be said to contain the possibility of abuse. What we have practically to consider, however, is whether this additional power is necessary in the interests of public revenue, and whether sufficient safe-guards cannot be provided to prevent a possible abuse of the power. The officers of the preventive department and the supervising officers feel that the absence of this power hampers their operations, and we have no reason to suppose that they are exaggerating their difficulties. The power was in fact exercised by the officers of the preventive department for a very long time, but the absence of a clear provision on the subject in the Tobacco Regulation has recently, though very rightly, led the courts to declare the exercise of the power illegal. I need hardly say that in these days of progressive enlightenment, when the average citizen is keenly alive to the essential difference between strictly legal and non-legal, though otherwise unobjectionable and even positively beneficent acts, it is not possible for executive officers to exercise any power, however necessary in the public interests, unless it has been specifically conferred on them under a clear provision of law. It will thus be seen that a clear necessity exists for so amending the law as to confer this power on at least certain classes of officers. As for the safeguards against possible abuse, I may mention that we have in the Tobacco Regulation itself a section which renders any vexatious search or arrest punishable. There is another safeguard provided in the proposed section, that the power will be exercised only by officers of some position. A pay limit of 50 Rs. is imposed, and I believe it will be conceded that ordinarily an officer who is on receipt of a monthly salary of Rs. 50 or upwards may be expected not to abuse his power. The section doubtless enables Government to confer the power on other officers; but the Council may rest assured that the discretion will be used only with due regard to the needs and the character and position of the officers concerned. The Abkari and other special laws contain similar provisions, and no instances of their having been used to the detriment of innocent persons have come to the notice of Government. Being an article of general consumption, the possession by any person of a reasonable quantity of tobacco does not *per se* create any presumption against him, and the officers of the preventive department are, therefore, in their own interests, bound to be more circumspect in exercising the power. I think, therefore, there is sufficient guarantee against the abuse of the power, and this is all that can be expected in a measure like this. The other sections are merely verbal modifications consequent upon the above provisions. With these remarks, I beg to introduce the Bill and trust that the Council will see no objection to the principle being affirmed.

Mr. Rajaram Row:—I second the proposition.

Mr. Kuruvila.—I beg to make a few remarks in connection with this Bill. The first amendment proposed is the introduction of the license system. It is promised to be a free license, and confined to specified areas. As a general rule, the license system is a drag upon the freedom of the operations of the subject population. On former occasions, I had occasion to object to free licenses when the proposed interference was with the products of the country and the innocent industries of our people. But as tobacco is a foreign article and its monopoly is held by Government, I have no objection to the introduction of a license system with the safe-guards promised in the Bill. But the rules proposed to be published will make all the difference. I feel it, therefore, my duty to express my opinion as to the conditions for the issue of these licenses. At present we have what is called the Nadacheet system. Every merchant is obliged to obtain and keep in his possession an authority from his vendor merchant in which reference is made to the number of the bale registered in the Sirkar ware-house. From the smallest to the highest merchant,

15

this Nadacheet system prevails. I do not see what superior advantage the Government anticipates or expects from the proposed license system. It may be that the detection and prevention of smuggling may be more technically possible. But in the interests of the people as well as of revenue, I submit that these licenses should be as freely obtainable as Nadacheets are at present. Nadacheets can now be given by any merchant to any sub-merchant. Any merchant can engage a sub-agent without any reference to Government and he can himself give authority to a sub-agent. I trust that so much freedom in the securing of licenses will be assured in the rules to be passed by Government to regulate the issue of licenses. As to the conditions under which the licenses are to work, I beg to bring to the notice of the Council that among the petty dealers in tobacco, there is a great number of disabled and unlettered people belonging to the poorest classes. I trust that the license system will not insist upon these petty dealers keeping an account of their dealings. It would work a great hardship upon these people, and it will tell also upon the poor labouring classes, if the convenience with which they now get tobacco is interfered with. In fact, the only condition that strikes me as necessary is that the license holder should show his authority for the tobacco in his possession. Anything beyond the authorised quantity may be suspected as smuggled. That is how the present system works. In other words, the issue of licenses should be so regulated that petty dealers, the monthly consumption through whom is limited, will not be insisted on to keep accounts of dealings with direct consumers. Of course, if any dealings take place with merchants, we can require them to be accounted for. But when the dealings are between petty merchants and direct consumers, I do not think it is possible. With the conditions I have suggested, I think the license system will work more good than harm, and it may be possible, by introducing the system, to help the administration of the tobacco revenue.

The second amendment is one which seeks to take power for the Government to authorise any officer of the Departments of Excise, Opium, Customs, Police, Salt, Revenue and such other money-making Departments, to search without a Magistrate's warrant, buildings, vessels and places suspected to contain contraband tobacco. It is also proposed to give them power to arrest any suspected person in such building, vessel, or place. I beg to bring to the notice of the Council the gravity of the change proposed to be introduced. The Mover in his remarks to-day said, as he has said in his Statement of Objects and Reasons that the power will be conferred only on officers of some position. But no such express reservation is seen in the wording of the section. As the section now stands, any officer of any of the Departments mentioned may, at the discretion of Government, be invested with the power of search and arrest. This, I think, goes far beyond the present Regulation and beyond necessity. Under the present law, if contraband tobacco is suspected to be hidden in a building, these petty officers have to guard it for a few hours until they get a warrant from the Magistrate. This is not a laborious or tardy process. I know some of the members of this Council will bear me out when I say that some years ago, smuggling was effectively checked by vigilantly enforcing the provisions of the present Regulation. I know from personal experience that in the Northern Division, a vigilant and energetic officer can secure sufficient information to forestall smugglers. I am very happy to state that some three years ago, smuggling was practically very little. Of late, however, smuggling appears to have increased and resulted in the consequent reduction in the tobacco revenue. The simple fact that the revenue for the previous years was higher would direct attention to the need for greater vigilance on the part of the officers, instead of seeking legislative assistance by an inordinately oppressive measure. Under the present law, the officers of the preventive department are authorized to seize any contraband tobacco in transit or in any open place, and to arrest any person in possession of such tobacco. That, I think, is quite sufficient. With regard to the hope that only officers of position will be empowered under the new law, I beg to observe that in the Regulation of 1063, there was a restriction upon the status of the officer, "superior in rank to a mudelpare or constable"; which was done away with by Regulation II of 1066. That shows that the Government is anxious to do away with such restrictions. It will, I am afraid, create great consternation in the public mind when they know that Government wish to take such

large powers, especially when the powers are to be exercised by petty officers of several departments of the State, which are manned by people generally with no judicial training and with no direct judicial supervision. If I really felt that the interests of the tobacco revenue demanded such a measure, I would have gladly supported it and sought a remedy by additional penalties for vexatious proceedings. But I think the proposed provision instead of increasing the revenue may decrease it, because the wholesome provision that Magistrates should get early information in regard to these cases will be taken away. If the proposed amendment in the law is passed, it will be in the power of petty subordinates to threaten any house-owner and start proceedings, and when bribed to suppress them. The chances are that they will collude with the smugglers to the detriment of the Government revenue. The connection of the Magistrates in the early stages of grave offences is, in my opinion, a guarantee both for the Government revenue and for the protection of the public. The Mover referred to the analogy of other special laws. I believe he means the Abkari and Opium Regulations. I do not think the analogy is fair. Tobacco is universally consumed in this country and every dwelling house will be found to contain some quantity of the article. It is, in fact, almost as universally resorted to as salt, and the Salt Regulation does not contain the proposed provision. In regard to Abkari and Opium, every sober man agrees with the Government policy and the Government has professedly and positively said that they wish to reduce the consumption of those articles. But as regards tobacco, although some casuists say that it is a "filthy weed" to be abhorred, I do not think the public treat it in that light, nor does the Government appear to desire the reduction of its consumption. Indeed, it takes a prominent part in the social amenities of the country. What strikes me as most serious is that the Bill makes no difference between innocent house owners and shop-keepers in this respect. If tobacco shops alone are proposed to be brought under the scope of this power, as is done in para 2 of the proposed section 11A, I would agree, but to render all houses liable to be terrorized at the caprice of the Police, Abkari, Tobacco, and other officers who do not command much confidence for their conscientiousness, is objectionable and unsafe. If the Government wish to bring any buildings under this power, I think it desirable to confine the power to the search of tobacco shops, as those who take up the profession can be expected to meet these officers on equal terms. It will afford the guarantee that innocent people will not be molested. I beg, therefore, most earnestly to submit that the power should be confined to the search of shops alone.

Mr. Ramier.—I do not propose at this stage to dwell at any length upon this Bill, as all that we are now called upon to decide is the principle of the measure. That principle is contained in two of its sections. We are asked to say whether Government need to take power (1) to declare that in certain specified areas the sale of tobacco shall be made only under a license; and (2) to authorise certain officers to search places within specified localities suspected to contain contraband tobacco, and to arrest persons who may be reasonably suspected to have committed an offence under the Tobacco Regulation.

It cannot certainly be doubted that this Bill refers to an article which is almost a necessary of life, with a very large portion of the people of this country. As such, we cannot be too careful or too cautious in avoiding undue interference with the dealings of the people in this article. We have no doubt that Government would be as anxious as ourselves in this respect, and I presume, the introduction of this measure has not been thought of without a full sense of responsibility. From the observations made by the learned Mover, I gather that, while on the one hand there is a disinclination to interfere with the trade of an article so universally resorted to, there is, on the other hand, a pressing necessity for checking the scandalous smuggling that is going on—due probably to insufficiency of the provisions contained in the present law. No doubt it is the look out of this Council, before granting the power, to see how and in what ways, safe-guards may be provided so far as safe-guards in legislative measures are possible. When power has to be given to be exercised at the option of the Government, a great deal must naturally be left to their discretion. But it seems to me it is quite possible to provide safe-guards in the Regulation itself which, if worked, would avoid the difficulties that are anticipated

by my friend Mr. Kuruvila, and I dare say will be anticipated by the public as well. I expected to see a number of petitions upon this Bill. Probably it has not been sufficiently long before the public. It was published only about four weeks ago, which I consider is hardly sufficient for a measure of this kind. I dare say before the Bill is passed, the public will have ample time to offer any criticisms they may have. Though the Bill does not contain all the necessary safeguards, I think they may be introduced in the Select Committee to which, I trust, it will be referred. There are various valuable suggestions thrown out by my friend Mr. Kuruvila, and I have no doubt they will be taken advantage of in the discussion of this measure before the Select Committee; and at a later stage, before this Council. With these remarks, I would allow the abstract principle of the Bill being affirmed.

Mr. Kochukrishna Marar.—It appears to me also that section 3 of the Bill is open to some objection. The power which is proposed to be conferred on the officers of the preventive department is rather excessive, and the chances are that they will be or are likely to be abused. To my mind, there is much force in the observations made by my friend Mr. Kuruvila, and I hope that when the Bill is referred to a Select Committee, this section will undergo alteration in the light of those observations. The section has no doubt, made provision for some safe-guards but, it appears to me they are insufficient, and the safe-guards regarding searches, contained in the Criminal Procedure Code and other Regulations may also, if possible, be introduced into this Regulation.

Mr. Maltby.—I take it that the principle of the Bill may be fully allowed and the details left for discussion at a later stage. I entirely approve of the principle.

President.—From the opinions of the members it is clear that they all approve of the principle of the Bill. The details will, of course, receive consideration at the hands of the Select Committee.

The Council having affirmed the principle of the Bill, Mr. Thanu Pillai proposed that the Bill be referred to a Select Committee consisting of Messrs. Rajaram Row, Ramier and the Mover, to report within one month.

Seconded by Mr. Maltby.

Carried.

GUARDIAN AND WARDS BILL.

Mr. Kochukrishna Marar.—I do not propose to make a long speech regarding this Bill. It has been before the public for a sufficiently long time. I believe you will have observed that the sections are mostly adopted from the corresponding British enactment. In a few of them, I have introduced some alterations which have been explained on a former occasion. Without any further remarks, I beg to move that the principle of the Bill be affirmed.

The principle having been affirmed by the Council, Mr. Kochukrishna Marar proposed that the Bill be referred to a Select Committee consisting of Messrs. Thanu Pillai, Prince, Ramier and the Mover, to report within four months.

Seconded by Mr. Maltby.

Carried.

NEGOTIABLE INSTRUMENTS BILL.

Mr. Kuruvila.—I beg to present the report of the Select Committee on this Bill and move that the Report and the amended Bill be published in the Gazette. The consideration of the Bill may be deferred to a future meeting.

The Council adjourned at 4 P. M.

K. KRISHNASWAMY RAO,
President.